IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4413 OF 1989

Ganpat Khanderao Deshmukh,
At & Post Dindori, Tal.Dindori, ...Petitioner
District Nasik. (Ori.Landlord)

Versus

2.Ramchandra Tukaram Gawande
3.Dnyandeo Tukaram Gawande
All residing at Chachadgaon, ...Respondents
Taluka Dindori, District Nasik. (Ori.Tenants)

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Mr.G.R.Rege with Mrs.Shakuntala A.Mudbidri
for Petitioner.
Mr.S.G.Karandikar for Respondents 2 & 3.

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CORAM: A.M.KHANWILKAR, J.

JULY 19, 2004.

ORAL JUDGMENT :

1. This Writ Petition under Article 227 of the Constitution of India takes exception to the Judgment and Order passed by the Maharashtra

Revenue Tribunal, Bombay dated 13th July 1988 in Revision No.Ten.A.128 of 1985. Briefly stated, the land in question is an agricultural land bearing Gat No.38 admeasuring 10 acres 33 gunthas of Village Chachadgaon, Taluka Dindori, District Nashik. The Petitioner claims to be the owner in respect of the suit land, which was originally Class IV-B Inam land. After Inam was abolished, the land has been converted to Rayatwari on payment of regrant charges and the land has been regranted to the Petitioner in the year 1965. The Petitioner had issued notices to the Respondents demanding arrears of rent for the period 1960-61 and terminating the tenancy rights in respect of the suit land. Thereafter, application was filed by the Petitioner for possession of the suit land on the ground of default on 1st August 1974, being Application No.66 of 1974 under Section 14 read with Section 29 of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as ‘the Act’). That application was, however, dismissed by the Additional Tahsildar on January 20, 1975. Amongst others, that order records that the land was Inam land and has been regranted in

favour of the Petitioner in the year 1965. It is noted in the order that the Petitioner did not apply for restoration of possession of the suit land for bonafide personal cultivation after the regrant and as such, the Respondents tenants have become deemed purchasers in the suit land since year 1967-68. Be that as it may, the Petitioner gave notices for subsequent period of defaults on 22nd September 1975, 17th May 1976 and 20th May 1977 alleging that the Respondents were in arrears, and for which reason, terminated the tenancy. On the basis of the aforesaid three notices, Petitioner filed fresh application for possession under Section 14 read with Section 29 of the Act, against which, the present Writ Petition arises before this Court.

2. Suffice it to mention that the said application came to be eventually dismissed by the Tahsildar, holding that the Petitioner failed to establish the default. However, the appeal preferred by the Petitioner was allowed by the Sub-Divisional Officer, who in turn directed the Respondents to deliver possession of the entire

suit property to the Petitioner. Respondents, therefore, carried the matter in Revision before the Tribunal. The Tribunal, in turn, by the impugned Judgment and Order has allowed the Revision Application preferred by the Respondents and set-aside the order passed by the Appellate Authority. The application filed by the Petitioner for possession has been consequently dismissed. The Tribunal has mainly found that the notices sent by the Petitioner, the basis on which application for possession has been instituted under Section 14 read with Section 29 of the Act, do not confirm to all the requirements of Section 25(2) of the Act. Inasmuch as, it failed to give intimation to the Respondents/tenants to pay rent within the period of three months of each default. This view is subject matter of challenge in the present Petition.

3. Having considered the rival submissions, the principal question that arises for consideration is whether the notices sent by the Petitioner on 22nd September 1975, 17th May 1976 and 20th May 1977 can be said to be in conformity

with the requirement of Section 25(2) of the Act and proceedings under Section 14 read with Sections 25 and 29 for possession can be rested on such notices. Before I proceed to examine this aspect, it will be apposite to advert to Section 25(2) of the Act. The same reads thus :

> "25(2) Nothing in this section shall apply to any tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent and the landlord has given intimation to the tenant to that effect within a period of three months on each default."

. On plain language of this provision, the landlord is obliged to give intimation to the tenants within a period of three months on each default. The question is: when the default in payment of rent by the tenants would commence. To answer this query, it will be useful to advert to Section 14(1)(a)(i). It stipulates the period before which the tenant is expected to pay the rent. By this provision, the tenant is expected to pay the rent for any revenue year before 31st day of May thereof. The expression revenue year has not been defined in this Act of 1948, but has been

so defined in Section 2(32) of the Maharashtra Land Revenue Code to mean the year commencing on such date, as the State Government may, by Notification in the Official Gazette, appoint. The Notification issued by the Revenue Department provides revenue year as 1st August to 31st July. A priori, there is substance in the argument canvassed on behalf of the Respondents that at any rate, there can be no default before the 31st day of May of any revenue year, having regard to the plain language of Section 14(1)(a)(i). Section 25(2) has been interpreted to mean that the landlord is obliged to give intimation to the tenant within a period of three months on each default. This proposition is reinforced by the decision of the Division Bench reported in **1970 (LXVIII) BLR 285 in the case of Dattu Subrao Patil vs. Dattatraya Pandurang Patil.** The relevant discussion is found at pages 289 to 290, where the Division Bench of our High Court has held that if the landlord wants to rely on the failure or default, the landlord is required to give specific notice of termination of tenancy on the basis of "that default", and the tenant has been afforded an opportunity to remedy the default

by paying the rent due within a period of three months from the notice given by the landlord.

4. As is noted earlier, the period of default would commence only from 1st of June of the relevant revenue year; and the landlord is obliged to give notice within three months therefrom. In other words, the view taken by the Revisional Authority in the fact situation of the present case will have to be upheld. In that, the Petitioner landlord failed to give notice for the first default period within three months of the default of that revenue year and the notices for the subsequent two years were given before the default period had actually commenced. Accordingly, none of the three notices were in conformity with the requirements of Section 25(2) of the Act. In any case, the first notice being clearly time barred will have to be discarded in which case also, the action should fail, as there was no valid intimation for three years on each default. As the notices sent did not conform to the requirement of Section 25(2) of the Act, the same cannot be pressed into service to maintain action of

possession under Section 14 read with Sections 25 and 29 of the Act.

5. For the view that I have taken, it will not be necessary for me to go into the correctness of the submission canvassed on behalf of the Respondents that in fact the second Application against which the present Writ Petition arises was not maintainable in view of the observations made by the Tenancy Authority in its decision dated 20th January 1975 to the effect that the Respondents/tenants have become deemed purchasers in the year 1967 itself and which decision has attained finality.

6. Accordingly this Petition fails. The same is dismissed. No order as to costs.

7. Issuance of certified copy is expedited.

A.M.KHANWILKAR, J.